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Current Topics.

Sir George Lowndes.

THE late Sir GEORGE LOWNDES, K.C.S.I., who died at Ringwood, on 18th September, at the age of eighty-one, was a familiar figure in Privy Council Indian Appeals long before 1929, when he was made a member of the Judicial Committee. A scholar of Winchester and of Oxford University, he commenced his career with seven years' experience as an assistant master in a preparatory school. The result was that he was called to the Bar at Lincoln's Inn at the comparatively late age of thirty. Not long afterwards he went out to practise in Bombay. His practice there grew, and there came a time when he shared nearly all the heavy commercial work with one other lawyer, the late Mr. INVERARITY. He retired from that practice some years before the last war, and commenced practice in Indian Appeals before the Privy Council, and soon was in nearly every case from India. In 1915 he returned to India for five years as Law Member of the Viceroy's Council, in 1917 he took silk, and in 1918 he became K.C.S.I. On his return from India he took up his practice again before the Judicial Committee of the Privy Council and he resumed his leading place. In 1929 he was sworn a member of the Privy Council and he sat on the Judicial Committee until he retired in 1933. As may be expected, he proved, with his long experience of India and its laws, an admirable appeal judge. Apart from his specialist attainments, Sir GEORGE'S interests were wide and he was an entertaining host and friend. A great lawyer and a great man has left us.

The Michaelmas Term.

TERM commences on Tuesday, 12th October, but some of the courts have been sitting since 29th September. The total number of actions for trial in the King's Bench Division is 477, as against 360 for the corresponding term of last year. Of these 183 are long non-jury actions (130 last year) and 271 are short non-juries (199 last year). There is one special jury and one common jury action, ten cases in the commercial list (fourteen last year) and eleven short causes (sixteen last year). In the Chancery Division there are twenty-two actions in the Witness List, twenty-eight in the Non-Witness List, twenty-four assigned and retained matters, forty company matters and seven appeals and motions in bankruptcy. The total is 121 causes and matters as compared with eighty-one last year. In the Divisional Court a total of 152 appeals have been set down, as against 113 last year. Fifty are in the Revenue Paper and eight in the Special Paper. There are seven appeals under the Housing Acts and one under the Public Works (Facilities) Act. There are eighty-six appeals in the Divisional Court list itself. There is a total of 182 appeals to the Court of Appeal, as against 164 last year; 177 are final appeals, four from the Chancery Division (fourteen last year), 109 from the King's Bench Division (sixty-eight last year), five in Divorce, two in Admiralty and forty-seven from county courts (forty-one last year), eight of which are appeals from judges sitting as arbitrators under the Workmen's Compensation Acts.

The Regency Bill.

ON 23rd September the Regency Bill was introduced into the House of Lords. It provides that the Heir Apparent or Heir Presumptive to the Throne, if not under eighteen years, shall not be disqualified from being a Counsellor of State by reason of his not being of full age. It is of interest to note that the PRINCESS ELIZABETH is Heir Presumptive to the Throne, and she will reach the age of eighteen on 21st April, 1944. It is also provided that it will be possible to except from the list of those who must be appointed Counsellors of State in the King's absence, any person who is absent, or intends to be absent, from the United Kingdom during the whole or any part of the period of delegation of authority to a Regency. This will exempt the Queen from the necessity of being appointed a Counsellor of State when she is abroad at the same time as the King. It will be recalled that the Regency Act of 1937 was the first Act to make permanent provision for the possibilities of the minority, incapacity or absence of the Sovereign from the United Kingdom. Previous Regency Acts merely aimed at dealing with particular situations. The King's Message, read by the EARL OF CLARENDON in the House of Lords, stated that it was the earnest desire of the Queen and himself that the PRINCESS ELIZABETH should have every opportunity of gaining experience in the duties which would fall upon her in the event of her accession to the Throne. His Majesty added that when the Queen and himself were absent from the United Kingdom in the year 1939, it was necessary, in order that the provisions of the Act should be complied with, that Her Majesty should be included among the Counsellors of State notwithstanding her absence. The Regency Bill will remove this anomaly.

Pay as you Earn.

THE late Chancellor of the Exchequer, Sir KINGSLEY WOOD, devised a system for the taxation of weekly wage earners "to confer," as the Financial Secretary to the Treasury said in the House of Commons on 22nd September, "all the benefits of a pay-as-you-earn basis by regulating the weekly deduction of tax so as to keep in step both with the weekly earnings and the liability for the whole year." The publication of the new proposals in a White Paper (Cmd. 6469, price 4d.) was announced on 22nd September in the Commons, and at the same time it was stated that it was proposed that the new system should be brought into force for the income tax year 1944–45, commencing 6th April, 1944. The White Paper points out that under the existing system the manual wage earner is assessed for any year on his actual earnings for that year by two half-yearly assessments, but collection of tax lags ten months behind the receipt of the assessed wages. The new system would automatically adjust the weekly deduction of tax to any rise or fall in wages and at the same time relate the weekly deductions to the final liability to tax on the aggregate wages for the whole year. The new system would apply to all wage earners whose wages were calculated weekly, and who at present are having their tax deducted under the method in force since 1940 under s. 11 of the Finance (No. 2) Act, 1940. It would thus cover both manual wage earners and some non-manual wage earners. At the end of every week there will be ascertained the amount of tax due on the total amount of wages paid to date, this amount being calculated by allowing against the total amount of wages the proportionate part of the personal reliefs due for the whole year. The amount of tax to be deducted in any particular week will be (*a*) the tax due on the aggregate up to and including that week, less (*b*) the tax already deducted on the previous weeks of the year. The deduction in any week will be the liability on the aggregate earnings up to date or "the cumulative tax," as it may be called, less the tax already deducted in the previous weeks of the year. The system provides for a repayment of tax to be made forthwith by the employer where the "cumulative tax" up to the end of a particular week is less than the aggregate amount of tax deducted in previous weeks owing to a fall or temporary ceasing of wages. Where the employer has not got in hand tax deducted from other employees he will be put in funds by the Inland Revenue for the purpose of refunds. In the case of fluctuating wages the system will tend to have the effect of levelling the actual net pay from week to week, because in weeks of higher earnings the tax deductions will be correspondingly higher, and in weeks of lower earnings there will either be a smaller tax deduction or actually a tax repayment. Employers will learn with relief that the system will not involve elaborate calculations. Each wage earner will be given a code number by the Inland Revenue in accordance with the allowances and reliefs due to him, and the code number will be notified to the employer well before the beginning of the year, i.e., 6th April. The employer will be supplied with tax tables and he will be able to work out the tax with the aid of the code number. The

employer will supply a tax deduction card to the employee, indicating the weekly deductions. The new system, it is calculated, will apply to about 10,000,000 taxpayers, of whom about 2,000,000 will be non-manual wage earners such as clerks and typists. It is also estimated that although the Exchequer will not suffer any immediate loss, the taxpayers affected will on 6th April, 1944, be discharged from an aggregate liability of about £250,000,000, about one-half of which would have been repayable in the form of post-war credits. On the introduction of the scheme, manual workers will have paid two-twelfths of the tax for the year 1943–44 and will be discharged from their liability for the remaining ten-twelfths. Non-manual workers will be discharged from seven-twelfths of the tax for that year. The Wage Earners' Income Tax Bill was introduced and read the first time in the House of Commons on the 24th September.

Workmen's Compensation.

IMPORTANT questions relating to the new Workmen's Compensation (Temporary Increases) Bill were dealt with by the Home Secretary in the House on 23rd September when Mr. WATT asked what steps had been taken to ensure that the additional benefits conferred by the new Bill would be available to claimants in cases where the accident occurred between 1st January, 1924, and the passing of the Bill. Mr. WATT further asked whether the Home Secretary had taken any steps to ascertain that liability for additional benefits conferred by the Bill would be accepted by underwriters even although their contract of insurance did not cover the same, and if not, what steps he proposed to take to ascertain the intention of insurers regarding the matter. Finally, he asked whether, in cases where employers liable to claimants for their weekly payments had ceased to exist and their contracts of insurance did not cover the additional benefits proposed by the new Bill, the Government would make the additional benefits payable from public funds. The HOME SECRETARY replied that the question arose under the Bill of 1940 in the same way as it arose under the present Bill, and experience had shown that it could be met with the co-operation of the insurance companies. As the legal liability for the payment of the additional allowances would rest on the employer, it would not be possible under the scheme of the existing law to provide that where the employer failed to meet his liability the money should be found from public funds. There had, however, been consultation with representatives of the insurance interests, and on this occasion, as in 1940, there would, he believed, be a widespread readiness on the part of the insurance companies to accept responsibility for the additional allowances in cases where they were responsible for weekly payments under the principal Act. Mr. HIGGS then asked what was the approximate percentage increase in the cost to industry for workmen's compensation due to the proposals made in the Workmen's Compensation (Temporary Increases) Bill for new accidents and for those cases where compensation was still being paid. The HOME SECRETARY answered that it was estimated that in the seven groups of industries for which previous statistics were available and which included the main industries in which the accident risk was high, the over-all percentage increase in respect of new cases would be approximately 22½ per cent. For all industries and employments, the percentage increase would probably be found to be lower than this figure. As regards cases current at the date of the Act, where compensation is still being paid, said Mr. MORRISON, the percentage increase will be greater owing to the fact that in some cases payments of compensation will already have continued for thirteen weeks. The amount of the increase will depend on the proportion of such cases and will vary appreciably in different industries.

Younger Justices.

THE official view on the subject of the desirable age for magistrates in juvenile courts has been again put on record by the Home Secretary in a circular letter recently sent to clerks to the justices. The letter states that having regard to the great importance of the work of the juvenile courts, especially at the present time, it must be remembered that the justices are required by statute to appoint to the juvenile court panel those men and women from among their number who are specially qualified to deal with juvenile cases, and in view of this statutory requirement great care should be exercised in making the selection. Mr. MORRISON repeated the advice given in a Home Office circular issued soon after the passing of the Children and Young Persons Act, 1933, that the justices most suitable for the work of the juvenile courts are those who have "knowledge and sympathetic understanding of young people," and "who have had experience of dealing with them in various forms of social work or otherwise." It is admitted that the rules made under the Statute do not fix any limit of age, but the circular says that it is apparent that the juvenile courts "need the assistance of the younger members of the Bench, who are normally in closer touch with young people and therefore better able to understand their point of view and sympathise with their interests." The circular goes on to say that in making new appointments to the commission of the peace the Lord Chancellor has recently given special attention to the needs of the juvenile courts, and it is understood that in many divisions younger men and women are now available. In any division where the justices find difficulty in selecting a really suitable panel the Secretary of State recommends that representations should be made to the Lord Chancellor, and that in the meantime the size of the panel should be restricted to the minimum requirements. It is always possible to add suitable members at a later date. The circular further emphasises the advantage of appointing one of the justices to act regularly as chairman of the juvenile court. Such a system tends to secure continuity of method and treatment, and experience shows beyond doubt that where a good chairman can be found the work of the juvenile court gains greatly in efficiency. As the life of the existing panels of justices for juvenile courts expires on 31st October, and new panels will then have to be appointed for three years, no one will complain of lack of guidance in selecting the panels.

The Uthwatt Report and the Building Societies.

IN connection with our "Current Topic" on this subject in last week's issue (*ante*, p. 339), it is fair to the building societies generally to refer to a letter to *The Times* of 25th September, from Mr. T. R. CHANDLER, general manager of the Woolwich Equitable Building Society, repudiating the views expressed by Mr. SMITH, general manager of the Halifax Building Society, on 10th September, and stating that opposition to the acquisition of development rights was a blunder. He suggested that a building society's duty was to adjust its methods so as to meet the need for house building under whatever system of land tenure was ultimately decided by Parliament. The writer further pointed out that the Building Societies Association had not officially made any pronouncement for or against the proposed acquisition of development rights in the Uthwatt Report. In fact, on 24th September, Mr. WILLIAM MCKINNEL, chairman of the Building Societies Association, speaking on the Uthwatt Report to the Metropolitan Association of Building Societies, said that speculation in land to be used for housing large numbers of our countrymen after the war was to be deplored. It was elementary political wisdom, he said, to institute inquiries regarding the best policy to make speculation impossible or at least very difficult. It would doubtless require more than elementary political wisdom to determine the lines of actual legislation to deal with the problem. It was surely not beyond our ingenuity to devise a policy which would prevent undesirable speculation and at the same time provide such forms of widely acceptable land tenure as would properly protect the individual's rights and the community's interests alike. In the past, he stated, freehold tenure had not had the monopoly of public appreciation, and building societies had done a great volume of business on suitable leasehold securities. It is good to know that the building societies' movement is approaching the problems raised by the Uthwatt Report with an open mind and a desire for progress.

Definition of "Main Dish."

A DEFINITION question under the Meals in Establishments Order, 1942 (No. 909), caused some discussion at the Mansion House justices' court, according to a report in the *Sunday Express* of 19th September. That newspaper pertinently asked: "When is a sandwich a meal, and what is the legal status of a sausage?" and recorded that a lady had been fined £22 1s. for failing to keep an accurate record of meals supplied. The defendant stated that she understood a sandwich to be a "subsidiary dish," and two sandwiches to be a "main dish" within the Order. She added that a veal and ham pie was a subsidiary dish unless followed by a sweet, and a sausage was a subsidiary dish, but served with a potato, it became a main dish. The defendant's solicitor, in reply to a remark by the solicitor for the City Food Control Committee that there were definitions of these things in the various Orders, is reported to have said: "If there is anyone in existence who understands these wondrous definitions I'd like to meet him. Take a sausage. What is its status in law? Theoretically, a main meal must contain some portion of meat. If a customer has a sausage does he get any meat? I don't know and I'm sure this lady doesn't. Perhaps, even the hungry customer could not find out. The result of all this is that the Food Office have cut this lady down almost to starving point." A "main dish" is defined by the order as "any dish which contains any specified food the weight of which is 25 per cent. or more of the total weight of the contents of the dish." "Specified food" means any one of the following: (*a*) meat; (*b*) fish; (*c*) egg. "Subsidiary dish" is defined as meaning "any dish which contains any specified food or foods amounting on the whole in weight to less than 25 per cent. of the total weight of the contents of the dish." "Dish" is defined as "any human food or assortment or combination of human food which on the normal practice of serving meals is served at the same time as part of the same course." There are also definitions of "meat," "fish" and "egg." It cannot be suggested that those who drafted the order were not thorough. Nor, it is submitted, can it be suggested that any clearer language could have been used. The line has to be drawn somewhere, and it has to be drawn with the fallible aid of human language. If the English language fails when confronted with a sausage, that is the fault of the sausage, not of either the English language or of the draftsmen who have to use that language.

Advantages of Seven-year Covenanted Subscriptions.

Answers to Questions.

(1) *What is the effect of the Finance Act*, 1941 ?

By virtue of ss. 25 and 27 of the Finance Act, 1941, and Statutory Rules and Orders, 1941, No. 1476, covenants entered into before 3rd September, 1939, the day on which war was declared, " shall, however worded, as respects payments falling to be made during any year of assessment, the standard rate of income tax for which is ten shillings in the pound, have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof." Said sections were passed by Parliament in order to rectify any conditions of anomaly or hardship in regard to " tax-free payments " which might arise owing to the standard rate of income tax advancing from 5s. 6d. in the £ in 1938–39 to 10s. in the £ in 1941–42. Dispositions entered into after 2nd September, 1939, the Chancellor has made clear in reply to a question in the House of Commons must be regarded as being undertaken in full knowledge of the effect of a rising rate of income tax.

(2) *Can covenants entered into prior to 3rd September*, 1939, *be cancelled so that they may be replaced by new ones not restricted to 20/29ths refund ?*

Of course not. To do so would be to abrogate the whole notion of the sacredness of a covenant. New covenants for new additional amounts can, of course, be undertaken at any time.

(3) *Is Parliament likely to discontinue the plan ?*

I think not. The amounts refunded are relatively small and this is the practical way the State recognises the immense good being accomplished by the approved charities working in its midst. In reply to a recent question in Parliament, the Chancellor of the Exchequer, Sir Kingsley Wood, stated that it is estimated that the amount of tax exempted owing to subscriptions to charities paid under covenant is about two million pounds for income tax and one million pounds for sur-tax. The official Financial Statement (1943–44) states the amount raised through direct taxation to be almost 1,007 millions in income tax and over 75 millions in sur-tax and the total of direct and indirect taxation to be almost 2,820 millions for the fiscal year 1942–43, so that to remit some three millions of this total does not seem to be disproportionate when set against the indirect benefit to the State accruing from the activities of any highly principled organisations operating under it.

(4) *Does the plan apply in Eire ?*

The plan, as described, applies to the United Kingdom of Great Britain and Northern Ireland. Eire, of course, has its own quite distinct fiscal system. It is understood that, by virtue of s. 20 of the Eire Finance Act, 1922, as amended by s. 3 of the Eire Finance Act, 1940, the plan does not apply to any disposition in Eire after the 8th day of May, 1940, but that dispositions entered into prior to that date will be allowed to run their course up to 6th day of April, 1947.

(5) *Can income tax payers at the reduced rate only (at present*, 1943–44, 6*s. 6d. in the* £*) join the scheme if they are willing to bear the extra tax of* 3*s. 6d. in the* £ ?

The Inland Revenue decline to give a general ruling on this point, so that only specific applications would be dealt with. Usually such taxpayers are not approached to join the plan, and the writer has no experience of such taxpayers joining. If allowed to join the extra tax to be borne should be clearly realised. For example, a taxpayer who is liable at 6s. 6d. only on, say, £100, would pay in tax £32 10s., but if such taxpayer were permitted to covenant for an actual net subscription of, say, £10 per annum, his tax bill would be £20 at 10s., or £10 tax, plus £80 at 6s. 6d., or £26 tax, making a total tax payable of £36, an increase of £3 10s. on his normal tax bill of £32 10s.

(6) *If a subscriber unavoidably breaks the covenant after, say, three or four years, will the Revenue claim back the tax they have repaid for those three or four years ?*

I think it highly unlikely that the Revenue would wish to revert in any way to the years in which the covenant has been honourably fulfilled, where it was entered into in all good faith. Any covenant is a sacred undertaking, and should not be entered into lightly at any time, and, probably, anyone who feels at all shaky about being able to carry out his pledges would be much better advised not to join at all in any binding agreement. At the same time there must be many wellwishers in most organisations who would have every reasonable expectancy of being able to duly carry out a contract for a period of seven years into the future, which is a relatively short period and contracts for very much longer periods are being constantly entered into in other business spheres, as, for example, in house purchase, etc.

(7) *Why is it so complicated ?*

The British income tax is a machine of precision, finely adjusted, to take account of the personal circumstances of the taxpayer—his family, his life assurance, and so on, and is based on the capacity to pay, and this necessarily makes it very complicated. To obtain a full and clear picture of the implications of any plan dependent on it is, therefore, essential.

(8) *If a congregational committee or controlling body of other charity do not sponsor the plan themselves, can separate individuals enter into covenants on their own account ?*

There would not appear to be any hindrance to individuals entering into covenants provided the charity concerned were willing to accept them.

(9) *Who makes the claims ?*

Usually the treasurer will do this, but the Revenue would deal with any duly accredited official who undertakes this work, such as the secretary. Uniformity, promptness, and clarity should be aimed at and every effort made to facilitate the work of the Revenue department, especially at the present time when the pressure of work is heavy owing to the war. A tabulated list should be made out and a copy of the claim kept.

(10) *In the case of a church, are contributions to all its funds allowed ?*

All regular periodical payments for any of the purposes of the church, including weekly freewill offerings, would appear to be allowed to be aggregated to a total annual figure.

(11) *Should amount of annual refund paid by the Revenue be aggregated with the amount of the net actual annual subscription in the annual financial report ?*

This would appear to be a clumsy method of accounting. A better method would seem to be to print a separate list of the individual amounts recovered as in this way subscribers will be able to check their own amounts, and the total number in the scheme will be given. If any subscriber objects to his or her name appearing in such a list a blank can be left against the amount concerned. Such separate list should give date Revenue make the refund.

(12) *What forms does the charity use in making claims ?*

First claims are usually made on official Revenue Form No. 68 and must be accompanied by the deed of covenant. Subsequent claims are usually made on official Revenue Form No. 235. All claims, first and subsequent, must be accompanied by the official Revenue Forms No. R.185 " certificate of deduction of Income Tax," duly completed by the subscriber.

A Conveyancer's Diary.

Liability for Damage by Animals.—II.

BEFORE leaving the point dealt with last week, it is perhaps worth while to note one other case which has come to my notice. It will be remembered that there has been some question whether the Court of Appeal made any innovation by holding, in *Heath's Garage, Ltd.* v. *Hodges* [1916] 2 K.B. 370, that an occupier of land is not liable for the consequences of the straying of his domestic animals on to the highway. In *Hadwell* v. *Righton* [1907] 2 K.B. 345, the plaintiff was riding a bicycle along the highway. In front of him he saw three fowls, the property of the defendant, who occupied premises adjoining the highway. A third party's dog came out and barked at the fowls, which suddenly fluttered up, one of them flying into the plaintiff's bicycle wheel and upsetting him. Admittedly the accident was not the fault of the plaintiff, but he did not succeed. Phillimore and Bray, JJ., in the Divisional Court, held that, assuming that the fowls were unlawfully on the highway, the damage was too remote, since the accident was not proximately caused by their presence there but by their being frightened and so flying about. But both the learned judges expressed doubts whether the presence of the fowls on the highway was unlawful at all: " Homesteads," said Bray, J., " are usually near a road, and it is practically impossible to keep fowls in. I should not hesitate to find that there was no danger at all in allowing them to stray, . . . and in the absence of anticipated danger, there is no room for the suggestion of negligence." There was thus a clear indication, although it was only dictum, that an owner is not bound to fence his poultry away from the road. That seems a sensible rule, even at the present day, and there is clearly no distinction between poultry and other domestic creatures. It is no answer to say that the occupier does have to fence as against his neighbour's land: the risk is a much smaller one, as was shown by Lord Greene's remark in *Hughes* v. *Williams*, cited last week, upon the difference in the law's attitude to the eating by a cow of a " few cauliflowers " belonging to her owner's neighbour and to an accident caused by her to an omnibus carrying thirty or forty people. If the law on this point is to be altered in the manner hinted at in *Hughes* v. *Williams*, occupiers of land will have a very heavy burden indeed as to fencing along their boundaries adjacent to roads.

So much for the case where animals stray on to roads. The next point is that, apart from certain exceptions noticed below, owners of all domestic animals are liable for trespasses *quare clausum fregit* committed by their animals, and for all consequential damages within the ordinary limits of remoteness. There can be no doubt whatever of this general proposition since *Ellis* v. *Loftus Iron Co.*, L.R. 10 C.P. 10, though the particular

circumstances of the case call for some comment. The plaintiff was the occupier of a farm; in one of his fields he kept a mare. The defendant company was in occupation of a piece of that same field, by arrangement with the plaintiff and his landlord. The defendant's piece of ground was fenced in with a fence described by the learned reporter as "wire fencing," and by Lord Coleridge, C.J., at p. 12, as "an iron fence." The defendant at times turned out a stallion on to his piece of ground. There was no evidence that the stallion was vicious, but on the contrary he "was as quiet a temper as you would ever wish a horse" (at p. 11). On the material date the mare was grazing in the field beyond the fence, when the stallion was turned out. The case as stated on the appeal was that "the horse of the defendant and the plaintiff's mare got close together on either side of the wire fence, and the horse biting and kicking the mare through the fence committed the injury complained of." On these facts the Court of Common Pleas felt some doubts whether the defendant could be liable for negligence, but they were all of opinion that he must be liable in trespass in that at least the stallion's mouth and one hoof must have protruded over or through the fence on to or over the plaintiff's territory. Lord Coleridge, C.J., and Keating, J., seem to have had no hesitation about this finding (nor, incidentally, about negligence), but Brett and Denman, JJ., obviously only arrived at it after a period of doubt (their doubts as to negligence persisted to the end). But both of them did in the end hold firmly that the defendant was liable for trespass *quare clausum fregit*, Brett, J., particularly saying that he so held after "having looked into the authorities." The odd thing about this particular case is that the report does not say in detail why the case was stated on the footing that both biting and kicking were done by the stallion *through* the fence. The kicking quite likely was so done, but if the fence were of a normal height the biting might easily not have been. The horse and mare were admittedly close together, and if the mare had put her head over the fence, as she well might, the horse could have bitten her on his own side of the fence in which case, apparently, his owner would have escaped liability. The real point, however, is that if it is proved against the owner of an animal that the animal has trespassed, be it ever so little, upon the land of the plaintiff, the owner will be liable to pay damages for the trespass itself and its consequences.

This class of liability is often spoken of as being for "*cattle* trespass," and it is so referred to in the passage in "Blackstone" (III, 211) on which Brett, J., relied. Clearly, it includes the trespassing of horses as well as cattle. On the other hand, no such rule applies to cats or dogs. (I shall refer to these animals later, as the rules applicable to them are peculiar.) The question is, where the line is drawn? In *Manton* v. *Brocklebank* [1923] 2 K.B. 212, all the members of the Court of Appeal seemed to be of opinion that a defendant is liable for the trespassing of such of his animals as are the subject-matter of a valuable property at common law, but not where the creatures were of "an intermediate class," such as "dogs, cats, squirrels, parrots and singing birds" (see p. 218). I think that the true view at the present day must be that one is liable for the trespasses of one's domestic creatures, other than cats and dogs. Creatures that are not domestic appear to be provided for, not by the law of trespass, but by a rule of absolute liability going far beyond trespass *quare clausum fregit*. These distinctions are clearly pointed to in the remarks of Williams and Wills, JJ., in *Cox* v. *Burbidge*, 13 C.B. (N.S.) 430. In particular, Williams, J., included poultry and sheep in the class for whose trespasses to land their owners are liable.

Though I have not been able to find an express statement to that effect, I take it that there is no real doubt that the person who is liable in trespass is not always the owner, but is the person who has the custody and control of the creature if the owner has not. It would, for example, be absurd to make liable for the trespasses of a racehorse the owner rather than the person to whom it is leased.

A further point on cattle trespass requires notice. By an exception, a person driving his cattle along a highway is not liable for any trespasses which they may commit when straying *off* the highway. This rule appears to be the converse of that which relieves owners of land adjacent to the highway from any duty to fence in their cattle: the argument seems to be that those in charge of the highway do not have to fence it either. This rule applies not only to fields adjacent to the highway, but to premises of any sort. Thus, in *Tillett* v. *Ward*, L.R. 10 Q.B.D. 17, the defendant's ox was being driven along a street at Stamford when it saw fit to walk in through the open door of the plaintiff's shop. Fortunately the ox was neither vicious nor unruly and the defendant was an ironmonger: for, despite all efforts, the ox could not be induced to leave for three-quarters of an hour. However, the damage was only £1. Lord Coleridge, C.J., and Stephen, J., were of opinion that even that amount was irrecoverable. They declined to make a distinction between the case of an animal straying from the highway in the country and that where it strays in a town. But this rule differs from its converse in that it is clear from the judgment of Stephen, J., that the owner of the animal is liable if he is negligent; the owner of land adjoining the highway is apparently not liable for the straying of his cattle on to it in any event, since there can be no negligence where there is no duty, and he is under no duty to fence (*vide Heath's Garage* v. *Hodges*).

In sharp distinction to these rules, which in most cases impose liability upon the owners of animals who commit trespass *quare clausum fregit*, is that there is no such liability for trespass to the person or trespass *de bonis asportatis*. Were it otherwise, the owners of the hen that flew into the bicycle and of the sheep which collided with the motor car would have been unquestionably liable, as Atkin, L.J., observed in *Manton* v. *Brocklebank* [1923] 2 K.B., at p. 229. Likewise, in his lordship's view, a horse which directly injures a chattel or a dog which achieves the asportation of a golf-ball, bring no liability upon their respective owners. Likewise, since horses are chattels, it would have been unnecessary for the court to seek a technical trespass to land in *Ellis* v. *Loftus Iron Co.*, if it had been the law that the owner of the stallion was liable for its trespass to the plaintiff's chattel, the mare.

The matters discussed this week are a specialised application of the law of trespass to land: they have nothing whatever to do with the rules about savage animals and the "first bite" which is allowed to domestic animals; that is part of the law of nuisance (or of negligence, on some views). The only point in common is that "cattle trespass" is apparently only capable of commission by animals *mansuetae naturae*, in which the common law admits the existence of vauable property, and not, on some definitions, by quite all of them. I shall consider the other matters next week. That is the logical order; since trespass to land is fairly easy to prove, one should, in considering a case of damage by an animal, begin by inquiring whether the complaint can be framed as such a trespass, before launching upon questions as to ferocity and *scienter*.

Landlord and Tenant Notebook.

Rent, etc., Restrictions Acts: An Excess Payments Problem.

In *Griffiths* v. *Davies* (1943), 59 T.L.R. 383 (C.A.) (which I discussed last week), it was held that a county court had no jurisdiction to give judgment for more than the amount of rent permitted by the Rent, etc., Restrictions Acts, and that, if it had by some mischance possibly exceeded its jurisdiction in this way, it had no right to refuse to entertain a subsequent application to determine the standard rent. The case was one in which a landlord had some years ago obtained an order for possession, execution to be suspended as long as the tenant paid the current rent and 2s. 6d. a month off a year claimed; when the tenant applied for a determination of the standard rent under s. 11 of the 1920 Act, the county court treated the matter as *res judicata*; the Court of Appeal held this was wrong, but declined to say what would be the ultimate result, as regards possible overpayments, if the standard rent plus permitted increases were found to exceed the rent reserved.

A correspondent who criticised this omission pointed out that if the tenant were not entitled to recover the excess, the following course might be open to an unscrupulous landlord who suspects that he is charging more than the recoverable rent; wait until the tenant is one or two weeks' rent in arrear, get a county court judgment for payment of the rent and so much off the arrears, and thus avoid refunding excess payments (or giving credit for them).

The Court of Appeal declined to pronounce any view on the question because, as MacKinnon, L.J., said, it was one on which "very different considerations might apply." Those considerations would undoubtedly include the scope and effect of the statutory provisions relating to recovery of excess payments, and to suspension of execution, which I will first set out, as far as relevant, accordingly.

By s. 14 (1) of the Increase of Rent, etc., Act, 1920, where any sum has been paid on account of any rent, being a sum which is by virtue of that Act irrecoverable by the landlord, the sum so paid shall be recoverable from the landlord who received the payment or his legal personal representative by the tenant by whom it was paid, and any such sum may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord. By s. 8 (2) of the Rent, etc., Restrictions Act, 1923, as amended by the Increase of Rent, etc., Act, 1938, s. 7 (6), any sum paid by a tenant which, under the above enactment, is recoverable by the tenant shall be recoverable at any time within two years from the date of payment but not afterwards.

By s. 5 (2) of the Act of 1920, at the time of the making or giving of any order or judgment for possession, the court may stay or suspend execution for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits, and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

If there be no other consideration, I think that the vital words to be considered in the above enactments are the words "on

account of any rent " in s. 14 (1) of the 1920 Act, and the words " payment by the tenant of arrears of rent, rent . . . and otherwise " in s. 5 (2) of that Act.

For on the tenant, in the case put by our correspondent, deducting on account of, or suing for, the excess, the argument for the landlord would probably (as is suggested by *Griffiths* v. *Davies*) run on these lines : I have a judgment for possession, conditionally suspended ; once the condition is suspended, execution follows. If you deduct, I put the high bailiff in ; if you sue, the answer is that the court cannot, in effect, vary its own judgment in your favour any more than it could in mine.

But the tenant's answer would, I suggest, be to point to the word " rent," where it occurs in both enactments and in the judgment. He is seeking to recover a sum made irrecoverable, which sum was " paid on account of rent " (s. 14 (1)); if it be said that it was paid in compliance with an order of court, the answer is that that does not prevent it being a sum paid on account of rent, for the condition is a condition " in regard to payment by the tenant of arrears of rent, " rent, . . . " (s. 15 (2)) as appears from the wording of the judgment itself.

If this be sound, it is unnecessary to consider the validity of the suggestion made by Lord Greene, M.R., in the course of *Griffiths* v. *Davies*, that " current rent " in such a judgment must mean whatever rent is legally exigible under the contract as modified, if modified at all, by the terms of the Rent Restrictions Acts. It savours of artificiality to say that when a court hears an action for possession on the ground of non-payment of rent is not put on inquiry as to whether the contract infringes the Act, and makes an order for possession suspended as long as the tenant pays *the* current rent and so much off *the* arrears the amounts in question are to be measured not only by reference to the contract sued and adjudicated upon. Suppose too that if the Act be applied, the result is that at the date of the order there were no arrears ; does the order have the effect of introducing a forfeiture clause into an agreement which contained none, entitling the landlord, who obtained it under a misunderstanding, to recover possession without further proceedings once the permitted rent is not paid ? Or suppose that the true statutory position is that when the order is made the landlord actually owes the tenant something on balance. The late Sir William Gilbert would gladly have exploited the possibility of a judgment in favour of A against B being read as a judgment in favour of B against A.

But the solution I have so far suggested would not deprive the landlord in our correspondent's example of all the fruits of his unscrupulous conduct if two years elapsed before the error were discovered, and I think the proper remedy in this case is one which is not directly connected with the law of landlord and tenant and the Rent, etc., Restrictions Acts, but is to be sought in the County Courts Act, 1934, s. 95, and Ord. XXXVII of the County Court Rules, 1936, which deals with the ordering of new trials and the setting aside of proceedings. Possibly this was one of the " very different considerations " alluded to by MacKinnon, L.J.

The power to order a new trial and that to set aside for irregularity are discretionary, and of the latter it is expressly provided that it shall be exercised only if the application be made " within a reasonable time " (r. 4 (2)), but the circumstances in which a court has mistaken its own jurisdiction (see *Lister* v. *Wood* (1889), 23 Q.B.D. 229 (C.A.)) as limited by a statutory direction would, I submit, justify the exercise of both powers even after a considerable period.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Law of Libel.

Sir,—I have referred to the case of *Sutherland* v. *Stopes* [1925] A.C. 47, cited by " Conveyancer " and again to the case of *Lyon and Another* v. *Daily Telegraph* cited by me. In both these cases it was taken for granted that the defence of " fair comment " was created (and therefore sanctioned) by law which had gone before and the availability or otherwise in law of the defence in question was not a point at issue. It is true that there was a great discussion about " fair comment " in *Sutherland* v. *Stopes*, but not as to whether or not it constituted a legal defence in a civil libel action. There is, as " Conveyancer " must know, a tremendous difference between common law, which is the natural law, and developments of it, and case law, which is exactly the opposite. In my opinion there can be no binding case law—that is, law or procedure made up by the judge on the spot in a particular case—in crime or torts. " Fair comment " is a comparatively modern innovation and is certainly not part of the natural or common law. After considerable research I have not been able to find any case in any court by which the defence of " fair comment " was created.

Beckenham, 22nd September. G. W. R. THOMSON.

Our County Court Letter.

Damage to Furnished Rooms.

IN *Harding* v. *Snaitham*, at Warwick County Court, the claim was for damages for breach of an implied agreement to occupy two rooms in a tenant-like manner. The plaintiff's case was that in May, 1941, he verbally let two furnished rooms to the defendant on a weekly tenancy at £1 1s. per week, with gas and use of coal cellar. The defendant left in April, 1943, when it was found that the wallpaper of one room was filthy, a piece of plaster was knocked out of the wall, a painted cupboard was marked by hot pans or plates placed on the shelves, a toilet set was broken, and the chairs were chipped. The redecorating would cost £4, and the damage to chairs was 10s. and to the toilet set 10s. The defendant's case was that the wallpaper was not new at the commencement of the tenancy. One room had to be used as a kitchen, and discolouration of the wallpaper had necessarily resulted from the cooking and washing up. The plaster had been inadvertently damaged by the handle of a child's perambulator. His Honour Judge Forbes observed that, in the circumstances in which the defendant was placed, the wear and tear was bound to be heavier than usual. Judgment was given for the plaintiff as follows : £1 for the plaster and wallpaper, 10s. for the chairs and 10s. for the toilet set, viz., £2 in all.

Membership of Club.

IN a case at Loughborough County Court an action was brought by three committeemen against the British Legion (Loughborough) Club, Ltd., for damages and a declaration that their suspension was invalid, and that they should not be excluded from the benefits and privileges of the club. The plaintiffs' case was that in June, 1942, owing to a beer shortage, they were appointed as a rationing sub-committee. They asked to inspect the cellar, but the steward refused them access. The plaintiffs were subsequently suspended. At the first hearing in court, the case was adjourned for settlement, if possible. At the adjourned hearing, it was announced that the defendants, having heard the plaintiffs' explanation, were satisfied that they had done nothing in excess of, or not in accordance with, their duties as committee members. The proceedings were therefore withdrawn, the defendants paying all the costs. His Honour Judge Galbraith, K.C., approved the settlement.

Possession of Furnished House.

IN *Milner* v. *Bartlett*, at Falmouth County Court, the claim was for possession of a furnished house and for £197 8s., viz., £102 for use and occupation at £10 10s. per week from 1st July, 1943, to 7th September, 1943 ; £15 8s. for railway fares and hotel expenses necessitated by the defendant's refusal to give up possession ; £80 in respect of other accommodation obtained by the plaintiff while dispossessed of his house. The plaintiff's case was that he let the house to the defendant at 13 guineas per calendar month for three months only, viz., from 25th March, 1943, to 13th June, 1943. On the latter date the tenancy expired by effluxion of time, but the defendant held over. The defendant's case was that he took the house on condition that he should have an option to purchase within three months. There was no *consensus ad idem* on this point, and, after going into possession, the defendant refused to sign an agreement tendered by the plaintiff. Rent was nevertheless accepted at 13 guineas a month. Therefore the defendant had a monthly tenancy, which had never been terminated. His own house had been requisitioned. His Honour Judge Scobell Armstrong made an order for possession in fourteen days. Judgment was given for £102 rent, with costs. The question of damages was referred.

Decision under the Workmen's Compensation Acts.

Injury to Hand.

IN *Collins* v. *Morris, Ltd.*, at Loughborough County Court, the applicant was an engineers' miller, aged eighteen. On 6th October, 1942, he had injured his left hand in a circular saw. The respondents had paid £175 into court, with a denial of liability. His Honour Judge Galbraith, K.C., approved the acceptance of this sum in settlement.

Obituary.

MR. E. MILLAR.

Mr. Edgar Millar, solicitor, of Messrs. W. R. Millar & Sons, solicitors, of St. Thomas' Street, London Bridge, S.E.1, died on Wednesday, 22nd September, aged 64. Mr. Millar was admitted in 1904 and for a long period was Secretary of the Surrey Dispensary. He was also on the committee of the Boys' Home and Christ Church Schools, Forest Hill.

MR. H. C. B. WILSON.

Mr. Henry Charles Barrow Wilson, solicitor, of Messrs. Carpenter, Wilson & Smith, solicitors, of Surrey Street, Strand, W.C.2, died on Wednesday, 22nd September, aged sixty. Mr. Wilson was admitted in 1906.

To-day and Yesterday.

LEGAL CALENDAR.

September 27.—The great William of Wykeham, Bishop of Winchester, died at South Waltham on the 27th September, 1404. He had been twice Lord Chancellor, first under Edward III and again under Richard II, when the young king, throwing off the council of regency, had reasserted his liberty of action. After devoting himself for two years to the task of launching the new régime he gladly resigned responsibilities he had not sought.

September 28.—On the 28th September, 1736, when the "Gin Act," passed to prevent the retailing of spirituous liquors in small quantities was about to be enforced, it was deemed advisable to send a detachment of sixty soldiers from Kensington to protect the Rolls House in Chancery Lane, for Sir Joseph Jekyll, Master of the Rolls, was obnoxious to the mob for his activity in supporting the measure. As it was, he was assaulted in Lincoln's Inn Fields and trampled on.

September 29.—A deodand was a personal chattel which, having been the immediate cause of the death of a human being, was forfeited, generally to the Crown but often to the lord of the manor. Before the Reformation it was applied to pious uses, but eventually it came to be treated as a mere forfeiture. Deodands were only abolished in 1846. In 1761, while London was celebrating the King's marriage, a squibb frightened the horses of a coach in the Bloomsbury district and a man was run over and killed. The Duke of Bedford, by his steward, claimed the coach and horses as lord of the manor of St. Giles's, and on the 29th September a coroner's jury found them deodands accordingly.

September 30.—August, 1842, was marked by serious riots in several manufacturing districts. On the 30th September a special commission was opened at Stafford to try those concerned in the disturbances there. Speaking of sedition by inflammatory speeches, Chief Justice Tindal said: "If such charges are brought forward, it must be left to your own sense to distinguish between an honest declaration of the speaker's opinion upon the political subjects on which he treats, a free discussion on matters that concern the public, as to which full allowance should be made for the zeal of the speaker, though he may somewhat exceed the bounds of moderation, and, on the other hand, a wicked design, by inflammatory statement and crafty and subtle arguments, to poison the minds of the hearers and render them instruments of mischief."

October 1.—Sir Thomas Hope, Lord Advocate of Scotland, who died on the 1st October, 1646, had sons even greater than himself, for three of them reached the Bench. He himself was one of the foremost lawyers of his day, and within three years of his coming to the Bar Lord Advocate Hamilton spoke of him as "one of the most learned and experienced" of Scots advocates. His practice brought him a fortune and he purchased estates in Fifeshire, Stirlingshire, Midlothian, Haddington and Berwickshire. He became Lord Advocate in 1626, and two years later in pursuance of an old claim and privilege of his office, he was sworn to secrecy and admitted to sit with the judges in cases in which he was not himself engaged. He discharged the duties of his office with much discretion during the troubles which closed the reign of Charles I.

October 2.—On the 2nd October, 1772, "the coroner's jury sat on the body of a German who, a few days ago, after attempting the life of Mrs. Taafe, of St. Clement's Lane, cut his own throat, and brought in their verdict of *felo de se*. There was found in his pocket a paper addressed to the jury, wherein he says he had no intention to kill Mrs. Taafe, but only to mark her, and then adds: 'Gentlemen, you need not give yourselves any trouble; I was in my right mind and senses when I did the deed.' Mrs. Taafe was the barber's wife at whose house he formerly lodged, and he bore her malice because she turned him out."

October 3.—"I was born on October 3rd, 1852, at a house near to the little village of West Ilsley on the Berkshire Downs, the third son and the sixth child in a family of eleven children. Looking back over a period of a little less than eighty years, my first recollection is of a circus at Reading to which my father took me. To this day I remember the wonderful performance of a lady, who jumped through a hoop from the back of a horse named 'The Black Eagle.' This performance filled my thoughts for a considerable time after I had seen it, but the name of the performer has long vanished from my memory, though that of the horse remains." So wrote Lord Parmoor in old age. His ancestors were squires in the Chilterns and the Cotswolds. His father, Henry Cripps, though a Queen's Counsel eminent at the Parliamentary bar, held to the old country way of living, kept a pack of harriers, and at seventy was known to kill a hare after a fair run before breakfast, go off partridge shooting till lunch and rest in the afternoon reading a Greek play with his son. His son Charles, who became Lord Parmoor, followed him in the sincerity of his Christian principles and sense of private and public duty; like him he became a leader of the Parliamentary bar, but, unlike him, he chose to enter politics. In 1914 he was raised to the peerage, taking his title from the Buckinghamshire manor, which was his childhood's home and where at last he died in 1941. In his later years his social and international ideals carried him into the Labour Party and in 1924 he became a member of Ramsay MacDonald's government.

HOLDING THE CHILD.

There was an affecting scene recently in the court of Mr. Justice Henn Collins, when a husband elected to go to prison rather than obey an order of the Divorce Court giving custody of his children to his wife. In England such differences rarely go so far, but in Ireland, aggravated by religious considerations, extreme measures had to be resorted to quite frequently. The late Mr. Maurice Healy in his ever-delightful book on the old Munster Circuit tells how "there was a form of proceeding which was very common in Ireland, which Stephen Ronan used to call a "Habeas Animam" application. One of the parties to mixed marriage would die, an immediate battle for the children would break out, often resulting in kidnapping, which would be met by an application for a writ of Habeas Corpus. Not infrequently the kidnapper, strong in his or her religious beliefs, would defy the court and go to prison." He then recalls the story of how a certain lady who had offended in that respect was committed to prison for six months without hard labour, since no objurations by the judges of the Queen's Bench Division could move her. By a slip the warrant directed that she should be confined in Mountjoy Prison, which is the man's prison in Dublin, and when the sheriff's officer presented her at its portal over which was inscribed the legend "Cease to do Evil; Learn to do Good," the governor refused her admittance. Next morning the tale of the mistake got about, and immediately Mr. O'Donnell, one of Dublin's metropolitan magistrates, dashed off a set of verses, which, since they have found their way into print more than once, it may be permissible to repeat:

"In most earthly tribunals injustice prevails,
But the Court of Queen's Bench is both prudent and mild,
It committed Miss A to a prison for males
As the very best way of producing a child.
How she'll do it surpasses conception to tell
If she cease to do evil and learn to do well.
But if in six months without labour confined
She produces a child, 'twill astonish mankind."

Books Received.

Yes, I hope so. By W. ARTHUR BRIGHT. 1943. Demy 8vo. pp. 106. London: Heath Cranton, Ltd. 8s. 6d. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXV, Pts. I–II. London: Society of Comparative Legislation. Issued to Subscribers only.

Revised Compensation for War Damage. By C. H. S. STEPHENSON, LL.D., and ERIC C. SPENCER, M.A., F.S.I., F.A.I. Third Edition, 1943. pp. 48. Hertford: C. H. S. Stephenson. 2s. 6d. net.

Staples on Back Duty. By RONALD STAPLES. Fourth Edition, 1943. Demy 8vo. pp. 135 (including Index). London: Gee & Co. (Publishers), Ltd. 21s. net.

Commodity Control. First Supplement up to date to 1st June, 1943. By J. BRAY FREEMAN, of the Inner Temple, Barrister-at-law. pp. xi and 42. London: Butterworth & Co. (Publishers), Ltd. 3s. net.

Practice Note.

DIVORCE.

APPLICATION FOR DECREE NISI TO BE MADE ABSOLUTE.

Attention is called to S.R. & O., 1943, No. 1325/L.25, which comes into operation on 1st November, 1943.

After that date it will not be necessary for an affidavit of search to be sworn, or a notice to be filed.

A certificate is substituted, and the solicitor will search the appearance book and an officer of the Registry will search the minutes.

Solicitors are requested to attend Room 38 with the certificates filled up.

They will then only have to search the appearance book, sign the certificate, and hand it to an officer in Room 38.

The inclusive fee in paying cases will be 10s. (impressed) and stamped certificates will be on sale in the Main Hall.

Unstamped certificates may be obtained from a law stationer, or they may be typed or written.

H. A. DE C. PEREIRA,
Registrar.
23rd September, 1943.

The Minister of Fuel and Power has given a permit relaxing the prohibition on the use of central heating in controlled premises from Monday last in Scotland, Cumberland, Westmorland, Northumberland, Durham, Yorkshire, Lancashire, and Cheshire. This permit is issued temporarily and is subject to revocation. The use of fuel for stoking central heating and hot water plants between 9.30 p.m. and 6 a.m. is still prohibited in all areas except under permit.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Abitibi Power and Paper Company, Ltd. *v.* Montreal Trust Company and Others. Attorney-General for Ontario (Intervener).

Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright. 8th July, 1943.

Canada—Ontario—Company—Debenture-holders' action—Winding-up order—Provincial legislation prohibiting the realisation of the mortgaged property—Validity of legislation—North America Act, 1867 (30 & 31 *Vict. c.* 3), *s.* 91—*Abitibi Power & Paper Co., Ltd., Moratorium Acts*, 1941 *and* 1942, *of Ontario.*

Appeal from a decision of the Court of Appeal of Ontario, dismissing an appeal from an order of the Supreme Court of Ontario.

The appellant company was incorporated in 1914. It carried on a vast undertaking which depended on the supply of pulp wood from Crown lands held under agreements for twenty-one years. It was also dependent for water power on leases and licences from the Crown. In 1932 it had outstanding $48,267,000 mortgage gold bonds due in 1935, with interest at 5 per cent., and cumulative and other shares of a value exceeding $38,000,000. The gold bonds were secured by a trust deed dated the 1st June, 1928, made between the company and the respondents, a trust company, whereby the company charged all its property in favour of the respondents in trust for the holders of the bonds. In 1932 the company made default in payment of an instalment of interest due on the bonds, and the respondents started a debenture-holders' action claiming administration of the trusts and a receiver was appointed of the company's undertaking. Subsequently, on 5th September, 1932, an unsecured creditor filed a bankruptcy petition against the company and a winding-up order was made. Thereafter, under the Winding Up Act, 1927, a Dominion Act, no proceedings could be proceeded with against the company except with the leave of the court. In December, 1932, the respondents were granted leave to proceed with their debenture-holders' action. Matters proceeded in a leisurely fashion until June, 1940, when an order for the sale of the company's undertaking was made. That sale was abortive and a Royal Commission was appointed to inquire into the company's position. On the 25th November, 1940, the respondents gave notice of a further motion for sale. On the 9th April, 1941, the Ontario legislature passed the Abitibi Power and Paper Company Moratorium Act, 1941, which prohibited any new action being brought for the purpose of realising on the mortgage and the taking of any further steps in the action then pending before the 31st December, 1942. The duration of the Act was subsequently extended. On the 9th October, 1941, the notice of motion for sale was renewed, and Middleton, J., held the Moratorium Act was *ultra vires* the local legislature as dealing with matters falling under the head of "bankruptcy and insolvency" under s. 91 of the British North America Act, 1867, and made an order for sale. His order was affirmed on appeal. The company appealed.

LORD ATKIN, delivering the judgment of the Judicial Committee, said their lordships were unable to agree with the decision of the Ontario courts. When the company was ordered to be wound up, the bond-holders could have claimed in the winding-up as secured creditors. They made no such claim. Once leave to continue their action was granted, the action proceeded as a provincial action, subject to provincial law regulating the rights in such an action, and subject to the sovereign power of the local legislature to alter those rights in respect of property within the province. There was no authority for the opinion that legislation in respect of property and civil rights must be general in character. The local legislature was supreme and its acts were not subject to the control of the courts. The action, though continued with the leave of the winding-up court, never became a proceeding in the winding-up and the temporary interference with it by the legislature to which it was subject was not an intrusion into the field of bankruptcy and insolvency. The appeal should be allowed.

COUNSEL: *Sir Walter Monckton*, K.C., and *Frank Gahan; D. N. Pritt*, K.C., and *Patrick Devlin; Charles Romer*, K.C., and *G. H. Crispin; Wilfrid Barton*, K.C., and *Frank Gahan*, for *The Attorney-General for Ontario* (intervener).

SOLICITORS: *Blake & Redden; Lawrence Jones & Co.; Linklaters and Paines.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Thyateira (Archbishop of) *v.* Hubert (Inspector of Taxes).

MacKinnon and Luxmoore, L.JJ. 12th May, 1943.

Revenue—Income tax—Greek archbishop of diocese in Western Europe with headquarters in London—Income from contributions in United Kingdom and abroad, also allowance from Greek Government—Archbishop employed by Greek Church Synod resident in Constantinople—Whether archbishop exigible to tax on whole income under Sched. E as holding an office of profit within United Kingdom, or under Sched. D and only exigible on such part of income as was remitted to United Kingdom—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Case V, r.* 2, *Sched. E, r.* 6.

Appeal from the judgment of Wrottesley, J.

This was an appeal by the Archbishop of T against the decision of Wrottesley, J., that his income, which was derived from three different sources, was wholly liable to tax under Sched. E. The three sources were as follows: (1) voluntary collections from Greek churches in the United Kingdom; (2) similar contributions from Greek churches in other parts of his diocese, which comprised Western Europe; (3) allowances made by the Greek Government. The archbishop's ecclesiastical superiors were the Greek Church Synod resident in Constantinople. The tomos or decree creating his diocese made London his headquarters, although his duties required him to travel throughout Western Europe. The archbishop contended that if hisi ncome was taxable at all, it ought to be taxable under Sched. D, Case V, r. 2, as he did not hold a public office in the United Kingdom, but that as the residence of his ecclesiastical superiors was at Constantinople, he would be only liable to tax on the sums actually received by him in this country, including remittances from abroad. On the other hand, the Crown contended that he was taxable under Sched. E, r. 6, which provides that tax shall be paid in respect of all public offices and employments of profit within the United Kingdom, including (*g*) "offices or employments of profit under any ecclesiastical body," for his office or employment was situate in London, and, therefore, he was liable to tax on all his income, whether remitted here or not. Wrottesley, J., held that he was liable to tax on the whole of his income under Sched. E. The archbishop appealed.

MACKINNON, J., said the real question was whether, upon the constitution of the archbishop's office by the tomos in the way in which the office had in fact been occupied and exercised by him, it was a public office within the United Kingdom, and it clearly was such an office, for the office was specifically locally situate in London. The fact that the archbishop was also a member of the Greek Synod was in principle not different from the case where a Roman Catholic Archbishop of Westminster happened at the same time to be a cardinal at Rome. The archbishop was therefore exigible to tax under Sched. E upon the whole of his income from the three sources mentioned, and the appeal would be dismissed.

LUXMOORE, L.J., concurred. Appeal dismissed.

COUNSEL: *Roland Burrows*, K.C., and *J. H. Bowe; The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills.*

SOLICITORS: *Westbury, Preston & Stavridi; Solicitor of Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Imperial Tobacco Company (of Grest Britain and Ireland), Ltd. *v.* Inland Revenue Commissioners.

Lord Greene, M.R., MacKinnon and du Parcq, L.JJ. 8th June, 1943.

Revenue—Income tax—Profit made by tobacco company on compulsory sale of American dollars originally bought for purpose of their trade—Whether revenue or capital profit—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Case I.*

Appeal from the judgment of Macnaghten, J.

This was an appeal by the company from the judgment of Macnaghten, J., whereby he dismissed their appeal from the decision of the Special Commissioners, whereby they confirmed an assessment to income tax on the profit made by the company by the compulsory sale of American dollars. The company had originally bought a considerable number of American dollars in order to finance their transactions in buying in the United States of America tobacco leaf for the purpose of their business as manufacturers of tobacco. On 30th September, 1939, acting under the Defence (Finance) Regulations, the Treasury required the company to sell to it all its surplus dollars, and on 31st October, 1939, the company, in pursuance of the Treasury requirement sold to it 19,805,000 dollars, with the result that the company made an exchange profit of £646,073 12s. 3d. The Commissioners of Inland Revenue assessed that sum to income tax. The company contended that the profit was a capital one acquired by the realisation of a temporary investment in American dollars, and was indistinguishable from the profit acquired by the taxpayers on the sale of Italian lira in the case of *McKinlay* v. *H. T. Jenkins & Sons, Ltd.* (1926), 10 T.C. 372, which was held to be a profit on a capital appreciation and not a revenue profit. The Special Commissioners and Macnaghten, J., held that the company had made a revenue profit and they confirmed the assessment.

LORD GREENE, M.R., said that the case was precisely the same as the case of a trader who, having acquired commodities for the purpose of carrying out a contract which fell under the head of revenue for the purpose of assessment under Sched. D, Case I, and then finding that he had bought more than he ultimately needed, proceeded to sell the surplus and make a profit. In that case it could not be suggested that the profit was anything but income. Similarly, in this case the company had sold a stock of dollars which it had acquired for the purpose of effecting a transaction on a revenue account, and it had, therefore, an income character impressed on it from the very start. In the case of *McKinlay* v. *H. T. Jenkins*, *supra*, the transaction in question was a speculation on the rate of exchange of the lira, and that case was to be distinguished. The appeal would therefore be dismissed.

MACKINNON and DU PARCQ, L.JJ., concurred.

COUNSEL: *J. Millard Tucker*, K.C., and *F. Heyworth Talbot; The Attorney-General* (Sir Donald B. Somervell, K.C.), and *R. P. Hills.*

SOLICITORS: *Trower, Still & Keeling*, for *T. Murray Sowerby*, Bedminster, Bristol; *Solicitor for Inland Revenue.*

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

In re Joel; Rogerson *v.* Joel.

Lord Greene, M.R., Luxmoore and Goddard, L.JJ. 5th July, 1943.

Revenue—Estate duty—Testator killed on active service—Finance Act, 1924 (14 & 15 *Geo.* 5, *c.* 21), *s.* 38—*Will—Construction—Gift of house "together with its contents—Whether beneficiary could disclaim the house alone.*

Appeal from the decision of Farwell, J. (86 SOL. J. 268).

The testator by his will dated the 1st October, 1939, after making certain specific and pecuniary bequests in favour of his brother and his two sisters, gave his leasehold dwelling "together with the contents" to his sister R. He gave his residuary estate as to two-fifths to his sister R as to two-fifths to his brother, and as to the remaining one-fifth to O, his late wife's brother's

eldest son. The testator was killed on war service in 1941. Accordingly, under the Finance Act, 1900, s. 14 (1), and the Death Duties (Killed in War) Act, 1914, s. 1, as amended and extended by the Finance Act, 1918, s. 44, and the Finance Act, 1924, s. 38, the estate became entitled to a remission of duty in respect of the estate passing to the testator's brothers and sisters and their descendants. Accordingly, the revenue authorities had remitted duty amounting to approximately £250,000. This summons was taken out by the executors of the testator asking how the benefit of this sum should be apportioned between the persons entitled to the residuary estate. The summons also asked whether R was entitled to disclaim the gift of the house without also disclaiming the gift of its contents. Farwell, J., held first, that the testator's brother and sister, who were residuary legatees, should be credited in equal shares with the benefit of the duty remitted. Secondly, that the gift of the house and its contents constituted two separate gifts. O, the other residuary legatee, appealed. The Commissioners of Inland Revenue were subsequently joined.

LORD GREENE, M.R., reading the judgment of the court, said that the remission allowed was in order. In framing the statutory provisions granting remission of duty the Legislature had fallen into a trap, in that it had endeavoured by one and the same set of words to deal with duties so different in character and incidence as legacy duty and succession duty, on the one hand, and estate duty on the other. Estate duty on the free personal estate of a deceased person fell upon residue and, if, pursuant to a statutory provision for relief of duty, the amount of duty was reduced, the person to benefit by the remission of duty would, *prima facie*, be the person entitled to residue. The apparent purpose of the legislation was to benefit specified relatives, and it did so operate in the case of legacy and succession duties, but in the case of estate duty the mere presence of a specified relative among the beneficiaries led to a remission, the benefit of which, unless the residuary legatee was a specified relative, would enure to a stranger. There was no escape from these conslusions unless on the true construction of the legislation (*a*) the remission was only to be granted in cases where a specified relative would in fact benefit by it, or (*b*) the benefit of the remission was to be adjusted in such a way as to confer it upon the specified relatives. They were unable so to construe the legislation. The result was to give the benefit of the remission to the residuary legatees, whether they were specified relatives or not. The appeal on this question would be allowed. Apart from authority the bequest of the house "together with its contents," appeared to constitute one gift. The dictionary meaning of "together with" was "in union with," "in company with." When a testator made a gift of a house and the furniture in it, he would seem to be giving the furniture because it was situated in the house and made up one whole which he knew as his furnished house. Farwell, J., would have so held had he not felt bound by the decision of Joyce, J., in *In re Lysons; Beck* v. *Lysons* (1912), 107 L.T. 146; 56 SOL. J. 705. In their judgment there was nothing in that case or in *In re Hotchkys; Freke* v. *Calmady*, 32 Ch. D. 408, quoted by Joyce, J., to compel the court to construe the bequest contrary to the *prima facie* meaning of the words used. The judgment of Farwell, J., on this point should be discharged and the appeal allowed.

COUNSEL: *Roxburgh*, K.C., and *Geoffrey Cross*; *Romer*, K.C., and *H. Hillaby*; *Harman*, K.C., and *F. Grant*, K.C.; *J. H. Stamp*; *A. H. Droop*.

SOLICITORS: *Slaughter & May*; *Gery & Brooks*; *Solicitor of Inland Revenue*; *Allen & Overy*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Lomax (Inspector of Taxes) *v.* Peter Dixon & Co., Ltd.

Lord Greene, M.R., MacKinnon and du Parcq, L.JJ.
1st, 2nd, 3rd June, 8th July, 1943.

Revenue—Income tax—Notes issued at a discount and redeemable at a premium—Whether the discount and premium were income or capital—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Case III, r.* 1 (*b*).

Appeal from the judgment of Macnaghten, J.

Previously to 1933 D & Co. had advanced to a Finnish company (whose whole issued share capital belonged beneficially to D & Co.) sums amounting to £319,000. The Finnish company had been formed by D & Co. for the purpose of manufacturing and supplying to D & Co. the wood pulp required by them in their business of manufacturers of newsprint. These advances were repayable on demand. On 11th November, 1933, the two companies entered into an agreement whereby (1) the Finnish company agreed to issue to D & Co. 680 notes (which were freely assignable) of £500 each, amounting in all to £340,000, i.e., £20,400 more than the £319,600 outstanding in respect of principal; in other words these notes were to be issued at what is commonly called a "discount" of 6 per cent.; (2) the notes were to bear interest at 1 per cent. above the lowest discount rate of the Bank of Finland during each year, but in no case higher than 10 per cent. per annum; (3) the notes were to be repaid, as to Nos. 1 to 100, on 15th November, 1933, and thereafter, as to twenty-nine notes, in consecutive order of numeration on 6th April in each following year; (4) each note was to be redeemed at a premium of 20 per cent. if in the year next before the year of its redemption the net profits of the Finnish company reached a specified level. The Special Commissioners held that the discount and the premium referred to in the agreement were in the nature of capital and not taxable. Macnaghten, J., reversed their decision and held that the discount and premium represented interest on the money advanced and were in the nature of income and taxable.

LORD GREENE said that the discount and premium were in the nature capital and not taxable. There was no ground for distinguishing the case from that of an ordinary issue of debentures by a trading company, and if at the date of the agreement D & Co. had lent to the Finnish company £319,600 to be secured by an issue of notes at 94, repayable over twenty years at 120, and bearing interest at a rate fixed by reference to bank rate in the usual way, the Revenue authorities would not have claimed tax on the discount or the premium. The element of risk was obviously a serious one, and the parties were entitled to express it in the form of capital rather than in the form of interest if they *bona fide* so chose. The difference between the price at which the notes were issued and the redemption price was not income from "discounts" within the meaning of Case III, r. 1 (*b*), of Sched. D, for the word "discounts" in that paragraph did not cover such a case, and it was impossible to suppose that the Legislature intended to include under the one word "discounts" two such entirely different commercial transactions as discounting a bill of exchange or a Treasury bill (which normally are short dated and carry no interest) and subscription for debentures issued at a discount, which was analogous to the present case. The observations of Rowlatt, J., in *National Provident Institution* v. *Brown* [1919] 2 K.B. 497, at p. 506, were approved, and the observations of Lord Sumner in the same case before the House of Lords [1921] 2 A.C. 222, at p. 254, could be explained and distinguished.

MACKINNON and DU PARCQ, L.JJ., concurred. Appeal allowed. Leave given to appeal to the House of Lords.

COUNSEL: *Roland Burrows*, K.C., and *J. Scrimgeour*; *The Solicitor-General* (Sir David Maxwell Fyfe, K.C.) and *R. P. Hills*.

SOLICITORS: *Jaques & Co.*, for *Albert Peace*, Batley; *Solicitor of Inland Revenue*.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION.

Inland Revenue Commissioners *v.* Castlemaine (Lady).

Macnaghten, J. 15th, 27th, July, 1943.

Revenue—Sur-tax—Annuity payable out of residuary estate of testator—Income of residuary estate not sufficient to pay annuity and other annual sums in full—Annuitant entitled to abated amount of actuarial capital value of annuity—Mistake of trustees whereby they at first paid annuity out of income—Payments out of income deemed to be in part payment of abated capital value due to annuitant—Payments being deemed to be capital payments, not liable to tax—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. E.*

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The Crown appealed against the decision of the Special Commissioners, whereby they discharged an assessment to sur-tax on certain payments made by the trustees of the will of the late husband of Lady C, in respect, *inter alia*, of an annuity of £3,000, payable to her under that will. Lady C was entitled under the said will (1) to the annuity of £3,000 for life, and (2) a rent-charge of £1,000. Her brother was also entitled under the will to an annuity of £250 for life. The total value of the residuary estate was £62,677, but the income thereof was not sufficient to pay in full the annuities and the charge, the capital actuarial value of which, in the aggregate, was £66,998. In accordance, therefore, of the principle of *In re Cottrell* [1910] 1 Ch. 402, what the trustees should have done was to pay a capital sum to Lady C in respect of the abated capital value of her annuity. The trustees, however, during the period in respect of which the assessment was made, namely, from the death of her husband on 6th July, 1937, to 1st January, 1940, at first paid to Lady C certain sums in respect of her annuity out of the income of the estate, not appreciating then that the income of the estate was insufficient to produce the annuities and charge in full. They then during the latter part of the period paid the annuity out of the capital. The Commissioners assessed the whole of such payments to sur-tax. The Special Commissioners held that the payments ought to be treated as capital payments and they therefore discharged the assessment.

MACNAGHTEN, J., said that in view of the fact that the income of the estate was insufficient to pay the annuities and the charge in full, Lady C was entitled to have the abated amount of the actuarial value of her annuity paid to her, and, although through the mistake of the trustees, certain payments had been made to her out of the income, nevertheless, those payments must be deemed to have been made in part payment of the capital sum due to her, and therefore the whole of the payments which had been made were to be considered as capital payments and were not assessable to tax. Appeal dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and, *R. P. Hills*; *F. Grant*, K.C., and *L. M. Jopling*.

SOLICITORS: *Solicitor of Inland Revenue*; *Wedlake, Letts & Birds*.

[Reported by J. H. G. BULLER, Esq., Barrister-at-Law.]

Parliamentary News.

HOUSE OF LORDS.

Regency Bill [H.L.].
Read First Time. [23rd September.

HOUSE OF COMMONS.

Wage Earners' Income Tax Bill [H.C.].
Read First Time. [24th September.

QUESTIONS TO MINISTERS.

POOR PERSONS RULES.

Mr. HOGG asked the Attorney-General whether his attention has been drawn to the breakdown of procedure under the Poor Persons Rules; and whether he is in a position to make any statement as to Government policy thereon.

The ATTORNEY-GENERAL: I am unable to accept my hon. friend's suggestion that the procedure under the Poor Persons Rules has broken down. From 1st January, 1942, as regards the Army, and from later dates as regards the Royal Air Force and Navy, there has been a most

substantial extension of the system for the purpose of giving assistance in litigation to persons in the Fighting Forces of specified ranks. This has resulted in a great increase in the number of applicants for certificates to sue as poor persons, while at the same time the number of solicitors available to conduct civilian cases has been greatly reduced by the claims of the Fighting Forces and other forms of national service. Inevitably some delays have ensued. In spite of this, however, the exertions of The Law Society are proceeding satisfactorily and substantial progress is being made. The policy of His Majesty's Government is to encourage and so far as possible assist the development of the system in every practicable way.

Mr. HOGG asked the Attorney-General whether he will ensure that the reconstruction programme will include the provision of free legal aid for the poor.

The ATTORNEY-GENERAL: The system established under the Poor Persons Rules engages the constant attention of my noble and learned friend, who has for some time been in consultation with The Law Society on the subject. Modifications and extensions of that system have been brought into operation during the war, and it may be expected that further developments of the system will be necessary. [22nd September.

DURATION OF WAR-TIME CONTRACTS.

Mr. PURBRICK asked the Attorney-General whether it is intended that all contracts made since the commencement of the war with Germany, unless otherwise stated therein, will be frustrated on the signing of the armistice or of the peace.

The ATTORNEY-GENERAL: I am not aware what type of contract my hon. friend has in mind. Broadly speaking, a contract is only frustrated by an event if that event makes it impossible to carry it out. If parties desire that their contractual obligation should close on the signing of an armistice or of the peace, they can of course, so provide. [22nd September.

DEFINITION OF ARMED FORCES.

Commander BOWER asked the Attorney-General why the Supreme Court, England, Procedure Order (S.R. & O., 1943, No. 1054/L.20), includes in the definition "Member of the Armed Forces of the Crown," a member of the Women's Royal Naval Service, who does not carry arms, while excluding a member of the Home Guard, who carries arms; and why in this order the words "His Majesty's Forces" are replaced by "The Armed Forces of the Crown."

The ATTORNEY-GENERAL: The procedure provided by these Rules of Court forms part of the general scheme for affording legal aid to whole-time members of the Forces. The scheme does not therefore apply to the Home Guard and they are excluded from the rules. The expression "Armed Forces of the Crown" is that used in the Women's Forces Regulations and is used here as the rules apply not only to men, but to all the various types of women's services provided for in the Women's Forces Regulations, 1941, as amended. Those regulations do not apply to the Women's Royal Naval Service, and they have therefore to be expressly included in the rules. [22nd September.

LEASES (SUB-LETTING).

Mr. W. BROWN asked the Attorney-General whether he will take powers to prevent landlords and/or ground landlords from inhibiting sub-letting where only a reasonable proportion of the total rent is charged for the portion proposed to be sub-let, and where the accommodation by minor structural alterations, such as the provision of cooking facilities, could be made suitable for living accommodation.

The ATTORNEY-GENERAL: My hon. friend will be aware that there are already on the Statute Book provisions designed to afford relief to tenants whose leases contain covenants not to sub-let without the consent of the landlord, and I am not aware that these provisions require strengthening. The question of structural alteration raises a different issue and if the hon. gentleman has evidence of cases in which difficulty has arisen I would be glad to know of them. [23rd September.

COURT PROCEEDINGS IN THE WELSH LANGUAGE.

Sir H. MORRIS-JONES asked the Home Secretary whether his attention has been called to a recent case at the Llandudno Petty Sessions in which the defendant, who was a Welsh-speaking Welshman, was refused the option of exercising his right under the Welsh Courts Act of giving his testimony in the Welsh language; and what steps he intends to take in the matter.

Mr. H. MORRISON: I am advised that s. 1 of the Welsh Courts Act, 1942, gives an absolute right to any party or witness to use the Welsh language in any court in Wales (which for the purposes of this Act includes Monmouthshire) if he considers that he would otherwise be at any disadvantage by reason of his natural language of communication being Welsh, and that a court has no discretion in the matter. In order to avoid any future misunderstanding, steps are being taken to advise courts of summary jurisdiction in Wales and Monmouthshire in this sense. [24th September.

According to a note in *The Times*, Singleton, J., at the Central Criminal Court on Monday last, commenting on a case committed for trial from Great Yarmouth, said there was a danger of causing unfairness to City of London juries by overloading the calendar with cases from outside London. The case had been sent to the Central Criminal Court because the county assize for its local area would not be held until the middle of October. "There is not a great deal of difference between 27th September and the middle of October," the judge said. "I think there is a great deal of overloading of this court. It is sometimes a little unfair on City juries that they should take cases from far away. Unless there is a long delay a case should be tried in the area in which it is committed."

Rules and Orders.

S.R. & O., 1943, No. 1331/L. 27.

SUPREME COURT, ENGLAND.

FUNDS.

THE SUPREME COURT FUNDS RULES, 1943. DATED SEPTEMBER 14, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and every other power enabling me in this behalf, do hereby make the following Rules:—

1. The procedure now in use for paying money into and out of court in causes and matters proceeding in a District Registry at a place other than Liverpool or Manchester shall be extended to the District Registry in Liverpool in relation to causes and matters in the King's Bench Division or the Probate, Divorce and Admiralty Division, and the procedure prescribed by the Supreme Court Funds Rules, 1927,† shall cease to apply to that Registry except in relation to causes and matters in the Chancery Division and except in relation to certain pending causes and matters, and accordingly the following amendments shall be made in those Rules:—

(*a*) In Rule 3, in the definition of "Registrar," the words "District Registry other than Manchester" shall be substituted for the words "other District Registry".

(*b*) In Rule 29 the words "if lodged in court (*a*) in the District Registry in Manchester or (*b*) in a cause or matter in the Chancery Division in the District Registry in Liverpool" shall be substituted for the words "if lodged in court in the District Registries in Liverpool or Manchester".

(*c*) In Rule 32 (2) the words "Liverpool or" shall be omitted, and the words "Rule 14" shall be substituted for the words "Rule 15".

(*d*) In Rule 96 (2) the words "Liverpool and" shall be omitted.

(*e*) The following Rule shall be substituted for Rule 106:—

"106. These Rules shall apply to funds in court or hereafter lodged in court, including—

(*a*) lodgments in the Chancery Division in the Liverpool District Registry or in any Division in the Manchester District Registry;

(*b*) transfers of funds from the District Registries other than Manchester under Rule 32 (2) or Rule 96 (2);

(*c*) lodgments under the Mines (Working Facilities and Support) Acts, 1923 and 1925‡;

(*d*) lodgments prior to the 1st day of October, 1943, in any cause or matter in the Liverpool District Registry and any further lodgments in the same cause or matter."

2. These Rules may be cited as the Supreme Court Funds Rules, 1943, and shall come into operation on the 1st day of October, 1943.

Dated the 14th day of September, 1943.

Simon, C.

J. P. L. Thomas } Lords Commissioners of
A. S. L. Young } His Majesty's Treasury.

* 15 & 16 Geo. 5, c. 49. † S.R. & O., 1927 (No. 1184), p. 1638.
‡ 13 & 14 Geo. 5, c. 20, and 15 & 16 Geo. 5, c. 91.

S.R. & O., 1943, No. 1330/L. 26.

COUNTY COURT, ENGLAND.

FUNDS.

THE COUNTY COURT FUNDS RULES, 1943. DATED SEPTEMBER 14, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 158 of the County Courts Act, 1934,* and all other powers enabling me in this behalf, and with the concurrence of the Treasury, do hereby make the following Rules:—

1. For the purposes of paragraph (2) of Rule 14 of the County Court Funds Rules, 1924† (which relates to the transfer of money from the High Court to a County Court) and of Rule 15 of those Rules (which relates to the investment of money paid into a County Court or transferred to a County Court from a District Registry other than Liverpool or Manchester), the procedure prescribed for the District Registry of Liverpool shall, subject as hereinafter provided for pending cases, be assimilated to the procedure prescribed for the other District Registries, and accordingly in sub-paragraph (*a*) and also in sub-paragraph (*b*) of the said paragraph (2) of Rule 14 and in paragraph (1) of the said Rule 15, the words "Liverpool or" shall be omitted.

2. The County Court Funds Rules, 1934, as amended by these Rules shall apply so far as practicable to cases pending in the Liverpool District Registry when these Rules come into operation, and save as aforesaid the County Court Funds Rules in force immediately before the date shall apply to such cases.

3. These Rules may be cited as the County Court Funds Rules, 1943, and shall come into operation on the 1st day of October, 1943.

Dated the 14th day of September, 1943.

Simon, C.

J. P. L. Thomas } Lords Commissioners of
A. S. L. Young } His Majesty's Treasury.

* 24 & 25 Geo. 5, c. 53.
† S.R. & O., 1934 (No. 1315), I, p. 272, and 1942 (No. 981), I, p. 100.

COUNTY COURT FEES ORDER, 1943.

This new Order (S.R. & O., 1943, No. 1359/L.28) is mainly a consolidation of the County Court Fees Orders hitherto in force. There are a few minor alterations of substance to each of which attention is drawn in the following notes. The Order comes into operation on the 1st October.

Paragraph 3 of the Order is new. It corresponds to para. 4 (3) of the Supreme Court Fees Order, 1930. The effect of both paragraphs is to exempt a Government Department from paying a fee unless the Department is going to recover the fee, as costs, from another party. The object is to save a transaction which only transfers money from one Government pocket to another.

Fee No. 5.—This fee of 1s. on an application to amend the name, occupation or description of the defendant is to be extended so as to apply to a respondent as it applies to a defendant.

Fee No. 9.—This fee of 2s. 6d. on an application to postpone or adjourn the hearing of an action, and the corresponding fee of 2s. 6d. on an application to reinstate the action, are to be extended so as to apply to a matter (i.e., an originating application, a petition or an appeal) as they apply to an action.

The old fee did not apply where the action was to recover a sum of money not exceeding £2. This exemption is to be replaced by another which applies both to actions and to matters. It is contained in a note exempting cases where the plaint fee was 5s. or less.

Fee No. 11.—This fee of 5s. on an interlocutory application before judgment is to be applied, by means of a note, to an application to the judge to sanction the compromise of an action where one of the parties is an infant, or a person of unsound mind. The new fee is only to be paid where it is in lieu of, and not in addition to, the hearing fee.

Fees Nos. 21 *and* 22.—These fees correspond without alteration to the old Fees Nos. 21 (i) and 21 (ii), and the next four fees are renumbered in consequence so as to cover the gap caused by the revocation, in 1940, of old Fee No. 26.

Fee No. 25.—This fee of 10s. an hour on taking an account or making an inquiry, does not apply where the inquiry is made by the registrar in the course of an action on which plaint and hearing fees are paid. The exemption is contained in the note, and the note is now to be extended to an analogous case which will arise under a new Rule, namely the case where one registrar acts for another in an inquiry into the means of a person claiming protection under the Courts (Emergency Powers) Act, 1943.

Fee No. 47.—This fee on proceedings under the Courts (Emergency Powers) Act, 1943, corresponds to the old Fee No. 46A on proceedings under the previous Acts (now repealed) with such alterations as are necessary to adapt it to the procedure under the Courts (Emergency Powers) Rules, 1943.

Fee No. 53.—This fee on proceedings under the Liabilities (War-Time Adjustment) Act, 1941, corresponds to the old Fee No. 50A, with two modifications:—

(1) The maximum fee payable for the adjustment and settlement of the debtor's affairs (Fee No. 53 (v)) is to be based on the net income of the debtor during the currency of the *protection order* instead of the *adjustment order*.

(2) Fee No. 53 (vi) is new. It imposes a fee of 5s. on an appeal to a county court against the rejection of a creditor's proof of debt by an adjustment officer or registrar. There has hitherto been some doubt whether such an appeal attracts any, and, if so, which, of the existing fees in Part I of the Fees Order where the proof is rejected (*a*) in relation to a "scheme" and (*b*) in an application for an adjustment order.

Fee No. 58.—Hitherto no fee has been payable on the rather rare application of a judgment creditor under Order 27, Rule 18, for an order that money in court standing to the credit of the judgment debtor may be diverted to satisfy the judgment debt. Fee No. 58 is to be extended so as to impose a fee of 5s.

Fee No. 73.—This fee on the issue of a judgment summons corresponds to the old Fee No. 70, except that on a judgment summons for 10s. or less the fee is increased from 6d. to 1s.

Fee No, 74.—This fee on the hearing of a judgment summons is automatically altered by the alteration to Fee No. 73.

War Legislation.

Statutory Rules and Orders, 1943.

No. 1306. **Adoption of Children, England.** Adoption Societies Regulations, Sept. 8.

No. 1316. Adoption of Children (Transfer Abroad) (Form of Licence) Regulations, Sept. 8.

No. 1317. **Alien Restriction** Direction, Sept. 8.

No. 1330/L.26. **County Court Funds** Rules, Sept. 14.

E.P. 1344. **Delegation of Emergency Powers** (Ministry of Agriculture for Northern Ireland) (No. 2) Order, Sept. 15.

E.P. 1345. **Drugs** (Shortage). Scarce Substances Order, Sept. 6.

No. 1333. **Fire Services.** National Fire Services (General) (No. 5) Regulations, Sept. 15.

E.P. 1347. **Fish** (Supplies to Catering Establishments) Order, 1942, General Licence, Sept. 18.

E,P. 1304. **Food Control Committees** (Constitution) Order, Sept. 8.

E.P. 1327. Food (Points Rationing) (No. 3) Order, Sept. 14.

No. 1310. **Income Tax.** Deduction of Income Tax (Sched. E) (Merchant Navy) Regulations, Sept. 8.

No. 1336/L.28. **Liabilities** (War-Time Adjustment) Rules, Sept. 15.

E.P. 1351. **Lighting** (Restriction) (Amendment) (No. 2) (Northern Ireland) Order, Sept. 20.

E.P. 1350. Lighting (Restriction) (Amendment) (No. 2) Order, Sept. 20.

No. 1325/L.25. **Supreme Court, England.** Procedure. The Matrimonial Causes (Amendment) (No. 2) Rules, Sept. 14.

No. 1331/L.27. Supreme Court Funds Rules, Sept. 14.

No. 1363. **Unemployment Insurance** (Emergency Powers) (Amendment) (No. 2) Regulations, Sept. 14.

E.P. 1320. **United States Forces**—Administration of Estates. Order, Sept. 2, declaring the designated appropriate United States Authority.

Provisional Rules and Orders, 1943.

Motor Vehicles (Construction and Use) (Amendment) (No. 4) Provisional Regulations, Sept. 13.

Circuits of Judges.

Autumn Assizes.

South Eastern.—Atkinson, J.: Cambridge, 13th Oct.; Norwich, 16th Oct.; Bury St. Edmunds, 23rd Oct.; Chelmsford, 28th Oct. Charles, J.: Hertford, 10th Nov.; Maidstone, 15th Nov.; Kingston, 23rd Nov.; Lewes, 29th Nov.

North and South Wales.—Lawrence, J.: Caernarvon, 18th Oct.; Ruthin, 23rd Oct.; Chester, 30th Oct.; Carmarthen, 17th Nov.; Brecon, 25th Nov. Lawrence and Lewis, JJ.: Cardiff, 29th Nov.

Western.—Humphreys, J.: Devizes, 13th Oct.; Dorchester, 19th Oct.; Taunton, 23rd Oct.; Bodmin, 28th Oct.; Exeter, 4th Nov. Humphreys and Lewis, JJ.: Bristol, Nov. 18th. Humphreys, J.: Winchester, 2nd Dec.

Northern.—Wrottesley, J.: Carlisle, 11th Oct.; Lancaster, 16th Oct. Wrottesley and Cassels, JJ.: Liverpool, 25th Oct.; Manchester, 22nd Nov.

Oxford.—Singleton, J.: Reading, 6th Oct.; Oxford, 12th Oct.; Worcester, 19th Oct.; Gloucester, 25th Oct.; Newport, 1st Nov.; Hereford, 9th Nov.; Shrewsbury, 13th Nov.; Stafford, 22nd Nov. Singleton and Birkett, JJ.: Birmingham, 29th Nov.

Midland.—Birkett, J.: Aylesbury, 2nd Oct.; Bedford, 7th Oct.; Northampton, 12th Oct.; Leicester, 18th Oct.; Lincoln, 27th Oct.; Derby, 8th Nov.; Nottingham, 15th Nov.; Warwick, 24th Nov. Singleton and Birkett, JJ.: Birmingham, 29th Nov.

North Eastern.—Oliver, J.: Newcastle, 13th Oct.; Durham, 27th Oct.; York, 10th Nov. Oliver and Stable, JJ.: Leeds, 17th Nov.

The following judges will remain in town: The Lord Chief Justice, Macnaghten, J., Hilbery, J., Tucker, J., Asquith, J., Croom-Johnson, J., and Hallett, J.

Notes and News.

Sir Ernest Jelf retired on Tuesday last from the position of King's Remembrancer and Senior Master of the Supreme Court. He will be succeeded by Master William Valentine Ball.

The Home Office announces that the Defence Regulation governing the winter closing hours of shops throughout the country will be in force from Sunday, 7th November, to Saturday, 4th March, inclusive, and will require shops other than the exempted trades to close at 6 p.m. (7.30 p.m. on the late night) over this period. As in previous years, shops in the central areas and streets of London will close at 4 p.m. over the period 7th November to Saturday, 22nd January, 1944, inclusive.

A joint agreement taking effect from 1st February, 1943, was made by the National Organisations of Employers and Operatives in the Building and Civil Engineering Industries for the grant of an annual holiday of six working days with pay to operatives in those industries, the scheme to be operated through the Building and Civil Engineering Holidays Scheme Management, Ltd. By an award of the National Arbitration Tribunal (No. 372 dated 16th June, 1943) six building firms, which had been operating individual schemes for holidays with pay, were required to observe the terms and conditions of the national scheme as administered by the Management Company in accordance with cl. 16 of the scheme. The Ministry of Works are advised that the provisions of para. (4) of Defence Reg. 56AB require all building and civil engineering undertakings registered under that regulation, employing labour of the classes whose wages are determined by the National Joint Council for the Building Industry and the Civil Engineering Construction Conciliation Board, to operate the national scheme for holidays with pay administered by the Management Company.

Wills and Bequests.

Mr. Harold Pope Addleshaw, solicitor, of Bowden, Cheshire, left £44,393, with net personalty £13,761.

Mr. Athelstan Arthur Baines, solicitor, of Brighton, left £51,914, with net personalty £48,182.

Mr. Frank Reece Martin, solicitor, of Liverpool, left £38,229, with net personalty £35,422.

Mr. Stephen Harold Pickering, solicitor, of Stafford, left 40,155, with net personalty £22,566.

Mr. Edward Ashley Plant, solicitor, of Congleton, left £17,092, with net personalty £17,092.

Mr. Frederick Gerard Sharpe, LL.D., D.C.L., solicitor, of Dublin, left personal estate in England and Eire, £36,316.

Mr. Edward Fairfax Studd, barrister-at-law, of Starcross, Devon, left £60,061, with net personalty £54,532.